

EAG/AL:DCP
F. #2014R000223

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

RAFAEL ALVAREZ and EVARISTO
TOVAR,

Defendants.

AFFIDAVIT AND
COMPLAINT IN SUPPORT OF
APPLICATION FOR ARREST
WARRANTS

(18 U.S.C. §§ 924(c), 1951)

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EASTERN DISTRICT OF NEW YORK, SS:

ELISABETH WHEELER, being duly sworn, deposes and states that she is a
Special Agent with the Federal Bureau of Investigation, duly appointed according to law and
acting as such.

Upon information and belief, on or about and between January 25, 2013, and the
present, both dates being approximate and inclusive, within the Eastern District of New York,
the defendants RAFAEL ALVAREZ and EVARISTO TOVAR, together with others, did
knowingly and intentionally conspire to obstruct, delay and affect commerce, and the
movement of articles and commodities in commerce, by robbery, to wit: the robbery of one or
more armored truck guards.

(Title 18, United States Code, Section 1951(a))

Upon information and belief, on or about and between January 25, 2013, and the
present, both dates being approximate and inclusive, within the Eastern District of New York,
the defendants RAFAEL ALVAREZ and EVARISTO TOVAR, together with others, did

knowingly and intentionally use and carry one or more firearms during and in relation to a crime of violence, to wit: Hobbs Act robbery conspiracy, and did knowingly and intentionally possess said firearms in furtherance of such crime of violence.

(Title 18, United States Code, Sections 924(c)(1)(A)(i) and 2)

Upon information and belief, on or about and between January 16, 2015, and the present, both dates being approximate and inclusive, within the Eastern District of New York, the defendant RAFAEL ALVAREZ did knowingly and intentionally attempt to obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by robbery, to wit: the robbery of one or more armored truck guards.

(Title 18, United States Code, Section 1951(a))

The source of your deponent's information and the grounds for her belief are as follows:¹

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been involved in the investigation of numerous cases involving violent crimes, including robberies, burglaries and extortion. I am familiar with the facts and circumstances set forth below from my participation in the investigation; my review of the investigative file, including the defendant's criminal history records; and from reports of other law enforcement officers involved in the investigation.

¹ Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware.

2. As described below, on January 25, 2013, and January 31, 2014 an armored truck guard was robbed at gunpoint of hundreds of thousands of dollars. In each robbery, the perpetrators pepper-sprayed a guard to execute the robbery.

The January 25, 2013 Robbery

3. On December 16, 2012, a cooperating source ("CS-1") informed law enforcement officers that the defendant EVARISTO TOVAR had told CS-1 that he and others had robbed an armored car in the past and planned to rob another one in the future.² EVARISTO TOVAR asked CS-1 to make room in CS-1's place of employment to hide a black SUV-type vehicle, which TOVAR told CS-1 would be the getaway vehicle in the planned robbery. The defendant EVARISTO TOVAR also said that room in CS-1's place of employment to hide the vehicle was necessary so that they could "cool it off." CS-1 informed law enforcement that EVARISTO TOVAR had further told him that he had committed the past armored car robbery with an Ecuadorian individual named "Rafael," whom CS-1 knew through his place of employment. CS-1 has identified a photograph of another co-conspirator ("CC-2"), discussed below, as the apparent brother of "Rafael."

4. During the December 16, 2012 interview, CS-1 also stated that EVARISTO TOVAR later informed CS-1 that their plans to conduct an armored car robbery had been postponed because there was an extra guard present when they planned to carry out the robbery.

² CS-1 was being interviewed by the NYPD as part of an investigation into the robbery of CS-1's place of business. The statements regarding EVARISTO TOVAR were made prior to a polygraph examination of CS-1 related to that robbery. According to the detective who performed the interview and the polygraph, CS-1 appeared to be truthful when he denied all involvement in the robbery of CS-1's place of business.

5. On Friday, January 25, 2013, an Ambro armored truck was robbed of \$208,000 at gun point in front of PLS Check Cashers in Queens, New York. Surveillance video and witness statements indicate that the perpetrators of the crime on January 25, 2013, displayed a firearm, pepper-sprayed a guard and escaped in a late-model black or dark grey Acura ZDX, which is an SUV-type vehicle.

6. Subsequently, on or about late February 2013, CS-1 told law enforcement officers that on or about February 2013, EVARISTO TOVAR had informed CS-1 that he had made a large amount of money from a job, though TOVAR had not said what the job was.

7. Based on my review of the surveillance video from the January 25, 2013 robbery, the individuals who committed the robbery resemble the defendants RAFAEL ALVAREZ and EVARISTO TOVAR.

8. On December 4, 2013, EVARISTO TOVAR was arrested by the New York City Police Department for possession of cocaine while sitting in a BMW sedan registered to a known acquaintance of TOVAR's. At the time of the January 25, 2013 robbery of the Ambro armored truck, the license plates on that BMW were registered to a black late-model Acura ZDX owned by the same known acquaintance of EVARISTO TOVAR.

The January 31, 2014 Robbery

9. On Friday, January 31, 2014, a Garda armored truck was robbed near an HSBC Bank in Elmhurst, Queens, New York, of approximately \$300,000. Based on a review of surveillance video and interviews of witnesses, including the armored truck driver, the robbery occurred as the driver was transporting two bags of U.S. currency from the bank to the armored truck, and at least three individuals participated in the robbery. One robber pointed a

firearm at the driver, the second robber sprayed pepper-spray in the driver's face and the third robber stole bags of U.S. currency from the driver. The three robbers escaped in a Ford Explorer SUV.

10. During an interview with law enforcement officers in June 2014, the driver of the Garda armored truck identified the defendant RAFAEL ALVAREZ as the individual who pointed a firearm at him during the robbery on January 31, 2014. A review of surveillance video from Friday, January 24, 2014 – one week prior to the January 31, 2014, robbery – shows a vehicle similar in appearance to the Ford Explorer SUV used by the three robbers waiting in front of the bank. Based on my training and experience, the surveillance video from January 24, 2014 indicates that the suspects conducted surveillance on the location of the robbery that day.

11. Based on my review of the surveillance video from January 31, 2014, the robber who pointed a gun, who during the robbery was wearing a hat and had his hood on, but left most of his face uncovered, resembled the defendant RAFAEL ALVAREZ; the robber who stole the bags strongly resembled EVARISTO TOVAR and the robber who sprayed mace in the driver's face resembled CC-2, although the bottom of his face was covered. Surveillance conducted on the defendant RAFAEL ALVAREZ by law enforcement officers in January and February 2015, indicates that he is approximately 5'6" and 160 pounds. Surveillance conducted on the defendant EVARISTO TOVAR by law enforcement officers in January and February 2015, indicates that he is approximately 5'6" and 270 pounds.³

³ According to NYPD pedigree reports, CC-2 is 5'6" and 140 pounds, RAFAEL ALVAREZ is 5'6" and 160 pounds and EVARISTO TOVAR is 5'6" and 270 pounds.

12. On February 1, 2014, the day after the robbery, CC-2 posted photographs on his Facebook account. Include among those photographs were pictures of CC-2 and RAFAEL ALVAREZ drinking at a bar. One of those photographs included the caption, “Lucky to have a brother like this.”

13. In addition, on February 1, 2014, CC-2 sent a message, in Spanish, on Facebook to a Facebook “friend” stating that he was “celebrating something that happened.” When the Facebook friend asked CC-2 for more details on what he was celebrating, CC-2 responded “man things, not boy things.”⁴

January / February 2015 Surveillance

14. On or about January 16, 2015, law enforcement officers began conducting surveillance on RAFAEL ALVAREZ at an address in Queens, New York, believed to be his residence. Witnesses told law enforcement officers that RAFAEL ALVAREZ drove a white Infiniti with blue tape along the trunk (the “TARGET VEHICLE”), and officers saw the TARGET VEHICLE move multiple times between January 19 and January 23, 2015 in the vicinity near RAFAEL ALVAREZ’s home address in Queens. On January 23, 2015, law enforcement officers observed RAFAEL ALVAREZ driving the TARGET VEHICLE on multiple occasions.

15. On Friday, January 23, 2015, law enforcement officers continued surveillance on RAFAEL ALVAREZ. That day, they observed him leave his residence in Queens, New York and drive to a location near the same HSBC bank in Elmhurst, Queens that

⁴ All of CC-2’s Facebook activity discussed herein was in the Spanish language.

was robbed on Friday, January 31, 2014. RAFAEL ALVAREZ parked the TARGET VEHICLE across the street from the HSBC bank with a clear view of the bank. After waiting for approximately 50 minutes in that space, RAFAEL ALVAREZ drove the TARGET VEHICLE around the block and parked across the street from the bank. RAFAEL ALVAREZ then proceeded to enter the bank, where he stayed for approximately 10 minutes. After RAFAEL ALVAREZ came out of the bank and returned to the TARGET VEHICLE, a Garda armored truck pulled up in front of the HSBC bank. RAFAEL ALVAREZ made a U-turn and pulled in front of the Garda truck. RAFAEL ALVAREZ then entered a deli next to the bank, where he maintained a view of the Garda armored truck. RAFAEL ALVAREZ returned to the TARGET VEHICLE and waited, still parked in front of the Garda armored truck, where he was still position when the courier returned to the armored truck, approximately 10 minutes after the armored truck had arrived at the bank. Approximately two minutes after the courier returned to the truck, the truck drove away from the front of the HSBC bank. Less than a minute later, RAFAEL ALVAREZ drove the TARGET VEHICLE away from the bank. Based on my training, experience and participation in this investigation, and based on the above-described actions of RAFAEL ALVAREZ, there is probable cause to believe that RAFAEL ALVAREZ was, on this date, conducting surveillance in anticipation of committing an armed robbery at or near the HSBC bank.

16. Law enforcement officers attempted to follow the TARGET VEHICLE after RAFAEL ALVAREZ drove away from the HSBC bank on January 23, 2015. However, RAFAEL ALVAREZ drove the TARGET VEHICLE in an evasive and erratic nature that

appeared to be designed to detect surveillance, and the officers were unable to maintain their surveillance.

17. On January 28, 2015, law enforcement officers conducting surveillance on RAFAEL ALVAREZ observed him conducting surveillance on a TD Bank in Queens, New York. In particular, RAFAEL ALVAREZ followed a Garda armored truck to the TD Bank. RAFAEL ALVAREZ was originally parked across the street from the TD Bank, but then moved his vehicle to the TD Bank's parking lot. The Garda armored truck left approximately 23 minutes later, at which point RAFAEL ALVAREZ pulled away from the bank. An employee of Garda has advised me that the armored truck that parked in front of the TD Bank operated on the route that also includes the HSBC bank that was robbed in January 2014 and that was surveilled by RAFAEL ALVAREZ on January 25, 2015. Based on my training, experience and participation in this investigation, and based on the above-described actions of RAFAEL ALVAREZ, there is probable cause to believe that RAFAEL ALVAREZ was, on this date, conducting surveillance in anticipation of committing an armed robbery at or near the TD Bank or the HSBC bank.

18. On Friday, January 30, 2015, law enforcement officials conducting surveillance on RAFAEL ALVAREZ observed him drive to the Garda headquarters in an industrial part of Queens, New York. Each Garda truck in Queens begins its route from this headquarters. Law enforcement officials observed RAFAEL ALVAREZ following a Garda armored car along its route throughout that day, including during stops at the same HSBC bank and TD Bank that RAFAEL ALVAREZ surveilled on January 25 and January 28, 2014, respectively. An employee of Garda has again confirmed that the armored truck that RAFAEL

ALVAREZ followed operates on the route that includes the HSBC bank that was robbed in January 2014 and that was surveilled by RAFAEL ALVAREZ on January 25 and January 28, 2015.

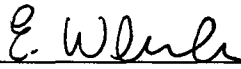
19. On Friday, February 6, 2015, law enforcement officials conducting surveillance on RAFAEL ALVAREZ observed him drive to the same HSBC bank that was robbed in January 2014. Once there, RAFAEL ALVAREZ waited at the bank for approximately 100 minutes until the Garda armored truck arrived at the HSBC bank. The Garda armored truck was at the HSBC bank for approximately 5 minutes and RAFAEL ALVAREZ was present in view of the armored truck the entire time. When the Garda armored truck left the HSBC bank, RAFAEL ALVAREZ proceeded to follow it for approximately 33 minutes.

20. On Wednesday, February 11, 2015 law enforcement officials conducting surveillance on RAFAEL ALVAREZ observed him conduct surveillance on the Garda armored truck in Queens, New York for over 45 minutes.

21. Telephone records obtained for the defendants RAFAEL ALVAREZ and EVARISTO TOVAR indicate that, between April 2014 and the present, they communicated more than 360 times over cell phones, including during the time period that RAFAEL ALVAREZ was conducting surveillance on the Garda armored truck.

22. On February 13, 2015, defendant RAFAEL ALVAREZ was arrested outside his residence by FBI agents as he attempted to get into this vehicle. Also on February 13, 2015, defendant EVARISTO TOVAR was arrested outside his home as he attempted to get into his vehicle.

WHEREFORE, your deponent respectfully requests that the defendant RAFAEL ALVAREZ and EVARISTO TOVAR, be dealt with according to law.



ELISABETH WHEELER
Special Agent, Federal Bureau of Investigation

Sworn to before me this
12th day of February 2015

THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK